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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,973	02/06/2001	John R. Goedel	12570.1USC1	3327

23552 7590 05/20/2002

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EXAMINER

SWINEHART, EDWIN L

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 05/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 3/5/02
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 26-29 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 26-29 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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### DETAILED ACTION

1. Claims 26-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 26 and 28 are improper Markush type claims, in that since the claimed elements of the group fail to "share a common utility" and fail "to share a substantial structural feature disclosed as being essential to that utility".

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Severence et al. in view of Murayama et al.

Severence et al. teaches the field of the invention, including a pair of phosphorescent bulbs/caps **22**. Severence et al. fails to disclose the claimed material.

Murayama et al. teaches such a material, and further teaches application to buoys.

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It would have been obvious to one of ordinary skill in the art at the time of the invention to form the caps of Severance et al. from a phosphorescent material as that taught by Murayama et al.

Such a combination would have been desirable at the time of the invention was made so as to provide for a buoy which will glow a substantial amount of time in the dark.

4. Applicant's arguments filed March 5, 2002 have been fully considered but they are not persuasive.

Applicant argues re the 112 2nd. rejection, that the elements recited in the Markush group are proper and consistent with office practice.

The examiner does not agree. Applicant has not set forth any specifics, case law or appropriate sections of the MPEP to support his argument. The section of the MPEP referenced by Applicant is directed towards restriction practice, and not germane to the issue at hand.

Applicant argues that buoy caps are not suggested by the applied references.

Severance et al. teaches a buoy, and elements 22 are caps, therefore Severance et al. teaches buoy caps.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Papers relating to this application may be submitted to Technology Center 3600 by facsimile transmission. The submission of such papers by facsimile transmission must comply with the notice published in the Official Gazette, **1096 OG 30** (November 15, 1989). The Fax Center number is (703)-872-9326.

7. Any inquiry concerning this communication should be directed to Ed L. Swinehart whose telephone number is (703)-308-2566.

8. Any inquiry of a general nature or relating to the status of the application should be directed to the Technology Center 3600 receptionist whose telephone number is (703)-308-1113.

May 16, 2002

A handwritten signature in black ink, consisting of a large, stylized 'E' followed by a cursive 'L' and 'S'.

**Ed L. Swinehart**  
**Primary Examiner**  
**Art Unit 3617**